

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :11.01.2016

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(PD).No.1158 of 2015
and M.P.No.1 of 2015

Chinnasamy

.. Petitioner/Plaintiff

Vs.

Kandasamy (died)

1.Suseela

2.Lakshmi

.. Respondents/Defendants 2 and 3

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 07.02.2015 made in I.A.No.777 of 2014 in O.S.No.202 of 2005 on the file of the District Munsif cum Judicial Magistrate's Court, Perundurai.

For Petitioner : Mr.N.Manokaran
For R1 and R2 : Mr.I.C.Vasudevan

ORDER

Civil Revision Petition is filed against the fair and decreetal

order dated 07.02.2015 made in I.A.No.777 of 2014 in O.S.No.202 of 2005 on the file of the District Munsif cum Judicial Magistrate's Court, Perundurai.

2.The revision petitioner herein as a plaintiff filed a suit in O.S.No.202 of 2005 for declaration of title and injunction stating that originally the suit property belongs to one Kandasamy, who is the first defendant, under the registered sale deed dated 31.03.1982, from whom, the revision petitioner/plaintiff purchased the same vide registered sale deed dated 04.05.1988 and from that onwards, the plaintiff has been in possession and enjoyment of the suit property. Suddenly, the first defendant attempted to interfere with the same on 27.06.2005 by denying plaintiff's title. Therefore, the plaintiff was constrained to file the suit for the aforesaid reliefs. Now the plaintiff's side evidence has been over and when the matter was posted for cross-examination of D.W.1, the plaintiff/revision petitioner herein has filed an application in I.A.No.777 of 2014 for amendment of survey number in the description of the suit property. The trial Court, after hearing both sides, dismissed the application, against which, the present revision has been preferred by the plaintiff.

3.Learned counsel for the revision petitioner/plaintiff submits that it is true, amendment application has been filed after commencement of trial. The first defendant/Kandasamy purchased the suit property on 31.03.1982 and the entire property has been purchased by the plaintiff from the first defendant on 04.05.1988. But during the survey, the survey number in the suit property has been sub-divided. Hence, the plaintiff wants to amend the same. The trial Court, without considering the above aspect, dismissed the application. He further submits that even after commencement of trial, as per Order VI Rule 17 C.P.C., the plaintiff is entitled to amend the plaint to do substantial justice. Neither the deceased Kandasamy nor the persons, who stepped into the shoes of Kandasamy, entitled to possess and enjoy the suit property in pursuance of the sale deed dated 31.03.1982 and whether the said Kandasamy retained some properties are to be decided only at the time of trial. The plaintiff is also ready to pay some costs to the defendants 2 and 3. Therefore, he prayed for allowing the revision. To substantiate his arguments, he relied upon the following decision:

(i) 2014 (3) MWN (Civil) 806 (E.K.Palanisamy v. Manonmani and

others);

(ii) 2015 (5) MLJ 109 SC (Mahila Ramkali Devi and others v. Nandram (D) through Lrs. and others);

4.Learned counsel for the respondents/defendants 2 and 3 submits that their father Kandasamy has purchased the suit property on 31.03.1982 with an extent of 13 cents, out of which, he sold only 10 ½ cents to the plaintiff and retained remaining 2 ½ cents. Therefore, the plaintiff/revision petitioner is not entitled to amend the plaint. Further, he submits that Advocate Commissioner has been appointed and he inspected, measured the suit property along with the Surveyor and filed his report on 01.04.2014. The plaintiff has filed the present application on 21.10.2014 with delay without assigning valid reason. Therefore, he prayed for dismissal of the revision.

5.Considered the rival submissions made on both sides and perused the typed set of papers.

6.The revision petitioner herein as a plaintiff filed a suit for declaration of title and injunction stating that he is the owner of the

suit property as per the registered sale deed dated 04.05.1988. The first defendant filed a written statement and contesting the suit. During pendency of the suit, Advocate Commissioner was appointed and after inspecting the suit property, he filed a report. The plaintiff's side evidence has already been over and when the suit was posted for cross-examination of D.W.1, the present application has been filed for amend the survey number in the description of the suit property. After amendment in the Civil Procedure Code, once trial has been commenced, amendment shall not be allowed unless he proved that as to why he did not file the amendment application before the commencement of trial and also with due diligence, he is unable to collect the material for amendment. In the case on hand, the Advocate Commissioner after inspecting the suit property, filed a report on 01.04.2014. The present application was filed by the plaintiff on October 2014.

7. At this juncture, it is appropriate to consider the following decision relied upon by the learned counsel for the revision petitioner/plaintiff:

(i) In **2014 (3) MWN (Civil) 806 (E.K.Palanisamy v. Manonmani and others)**, para-15 and 16 are extracted

hereunder:

"15.Considering the aforestated circumstances along with the above decisions, the suit was filed on 17.06.2008 and the written statement was filed by the defendant during July 2009 disputing the plaintiffs' title to the suit property. Hence, the plaintiffs have filed the application to amend the plaint for declaration of title to the property only on 05.01.2011. As per the dictum of the Apex Court in **(2009) 2 SCC 409 (Vidyabai and others v. Padmalatha and another)**, proviso to Order VI Rule 17 of C.P.C. is mandatory.

16.At this juncture, learned counsel for the plaintiffs would take me through the affidavit filed in support of the application and submitted that since the previous counsel has given an instruction to withdraw the suit and file fresh suit, the plaintiffs have changed their counsel and traced the title deed stands in the name of their grand father and at this stage, it is necessary for the plaintiffs to file the application for amendment instead of withdrawing the suit. So due diligence, the plaintiffs unable to file the amendment application at an earlier point of time. "

In the above decision, it was held that due diligence, the plaintiff

was unable to file the application at an earlier point of time. But the above decision is not applicable to the facts of the present case. Because in the case on hand, it is the case that the plaintiff has purchased the suit property from the first defendant.

(ii) In **2015 (5) MLJ 109 SC (Mahila Ramkali Devi and others v. Nandram (D) through Lrs. and others)**, it was held that amendment can be allowed at later stage to render substantial justice. In para-22 and 23, it is held as follows:

“22.In the case of Jai Jai Ram Manohar Lal v. National Building Material Supply, Gurgaon, AIR 1969 SC 1267 : 1969 1 SCC 869 : LNIND 1969 SC 129 this Court held that the power to grant amendment to pleadings is intended to serve the needs of justice and is not governed by any such narrow or technical limitations.

23.In Pandit Ishwardas v. State of Madhya Pradesh and others, AIR 1979 SC 551, this Court observed:

“We are unable to see any substance in any of the submissions. The learned counsel appeared to argue on the assumption that a new plea could

not be permitted at the appellate stage unless all the material necessary to decide the plea was already before the Court. There is no legal basis for this assumption. There is no impediment or bar against an appellate Court permitting amendment of the pleadings so as to enable a party to raise a new plea. All that is necessary is that the Appellate Court should observe the well-known principles subject to which amendments of pleadings are usually granted. Naturally, one of the circumstances which will be taken into consideration before an amendment is granted is the delay in making the application seeking such amendment and, if made at the Appellate stage the reason why it was not sought in the trial Court. If the necessary material on which the plea arising from the amendment may be decided is already there, the amendment may be more readily granted than otherwise. But, there is no prohibition against an Appellate Court permitting an amendment at the appellate stage merely because the necessary material is not already before the Court.” “

The above decision is not applicable to the facts of the present case, because in the above decision, the application was filed before amendment of C.P.C.

8. On perusing para-5 of the affidavit filed in support of the application, it was stated that out of 13 cents, the plaintiff purchased only 10 ½ cents and the remaining 2 ½ cents are available to the defendants. Moreover, the Advocate Commissioner has been inspected the suit property and filed a report even on 01.04.2014 and both the parties are not able to raise any objection. Furthermore, on perusing para-6 and 7 of the affidavit, it clearly reveals that the plaintiff did not assign sufficient cause as to why he is unable to file the amendment application before commencement of trial. In my view, the delay has not been properly explained. The trial Court after considering the aforesaid aspect in proper perspective, rightly dismissed the application. Therefore, the order passed by the trial Court does not suffer any infirmity or illegality and it is hereby confirmed. The revision is dismissed as devoid of merits.

9. In fine, the Civil Revision Petition stands dismissed. No costs. Consequently connected Miscellaneous Petition is closed.

11.01.2016

Index: Yes/No

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R.MALA,J.

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To

The District Munsif cum Judicial Magistrate's Court, Perundurai.

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